IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2534 OF 2004

1. Shri Mangesh Dattaram Ayare)
aged about 37 years,)
Occupation Service, residing)
at Navnath Chawl, Devi Pada)
Borivli (E), Mumbai 400 066)

2. Shri Appa alias Vijayrao)
Salvi, aged about 65 yrs.)
Ex.M.L.A., having his)
lisiaon office at Taluka)
Rajapur, Dist. Ratnagiri.)....Petitioners

Versus

1. The State of Maharashtra)
through Governmetn Pleader's)
Office, High Court,Appellate)
Side, Mumbai.)

2. The State Minister for Home)
Government of Maharashtra)
Mantralaya, Mumbai 40 032.)

3. The Home Secretary,)
Government of Maharashtra)
Mantralaya, Mumbai 400 032.)

4. The Director General of)
Police, Maharashtra State)
having office at Colaba,)
Mumbai.)

5. Shri Sunil Pundalik)
Kalagutkar, Police Sub-)
Inspector, Guhagar Police)
Station, Dist.Ratnagiri.)

6. The Supdt. of Police,)
Dist.Ratnagiri, Ratnagiri.)....Respondents

Mr.H.N.Mirashi, Advocate for the Petitioners
Mr.D.S.Mhaispurkar, APP for the Respondent Nos.1 to 4 &

6

Mr.N.V.Bandivadekar, Advocate for the Respondent No.5

CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.
27th April, 2005

P.C. :

1. Heard.

2. The petitioners pray for direction in the form of writ of mandamus to the Respondent nos.2 and 3 to abide by their assurance stated to have been given under letter dated 20.3.1997, copy of which annexed to the petition as Exh.K, and secondly for compensation to the tune of Rs.10,00,000/= as damages the petitioner No.1 on account of assault while the petitioner No.1 was in custody and for his false implication in a criminal case.

3. The reliance is sought to be placed in the decisions in matter of D.K.Basu vs. State of West Bengal reported in **AIR 1997 SC 610** and Saheli A.

Women's Resources Centre through Ms Nalini Bhanot & Ors. vs. Commissioner of Police, Delhi Police H.Q. and Ors. reported in **(1990) 1 SCC 422.**

4. The facts disclosed in the petition reveal that the petitioner No.1 was arrested on 12.4.1992 in the course of investigation pertaining to death of one Vijay Ayare. On completion of the investigation the charge-sheet was filed. On conclusion of the trial the learned Sessions Judge, Ratnagiri acquitted the petitioner No.1 observing that the prosecution had failed to prove the allegation against the petitioner No.1. The said order of acquittal was passed on 18.11.1992. By letter dated 2.6.1995 by the Petitioner No.2 addressed to the respondent no.2 the Minister for State in relation to the Home Department, it was sought to be requested for initiation of action against Respondent no.5, who was the Investigating Officer in relation to the said criminal case in which the petitioner no.1 was acquitted by the learned Sessions Judge, Ratnagiri. It is the contention of the petitioners that the then Dy. Chief Minister of the State of Maharashtra by his letter dated 29.6.1995 assured him to personally look into the matter and to

hold necessary enquiry. It is further contention of the petitioners that on 20.7.1996 the respondent no.3, the Home Secretary of the State of Maharashtra, ordered the inquiry regarding the death of Vijay Ayare. It is further case of the petitioners that on 27.5.1996 the petitioner No.2 addressed a letter to the Respondent no.2 for consideration of the request made by the petitioners for enquiry into the matter relating to the killing of Vijay Ayare, and that on 27.8.1996 the Government of Maharashtra directed the respondent no.3, the Home Secretary, to reopen the investigation and handover the investigation to the Criminal Investigation Department. It seems that the petitioners by their letter dated 23.10.1996 warned the State Government that the petitioner no.1 would go on hunger strike till death unless the real culprit is arrested and punished. In reply to the said letter, it is a case of the petitioners that the State Government assured that the appropriate action would be taken; however, the respondents have failed to take any action and they have not paid any compensation to the petitioners. Hence the petition.

5. As regards the relief pertaining to the

direction in the form of writ of mandamus to the respondent nos.2 and 3 to abide by their alleged assurance given under letter dated 20.3.1997, it is seen that the letter of 20.3.1997 was written by the Personal Assistant of Minister for State, Industry, Textile, Law & Justice and Home of the Government of Maharashtra. The letter reads thus -

> "Your application has been received by the Hon'ble Minister for State and the instructions for definite action have been issued to the concerned.
>
> The Hon'ble Minister for State has assured that the progress in this matter will be made before the end of budgetary conference. On the directions given by the Hon'ble Minister, you are therefore requested to withdraw your hunger strike."

Plain reading of the above letter discloses that there had been no assurance of whatsoever nature given by the author of the letter either on behalf of any Minister or on behalf of the State Government. What was informed to

the petitioner under the said letter, and that too by the Personal Assistant of the concerned Minister for State that the concerned Minister had issued necessary directions for definite action in the matter. It was not revealed in the letter as to what was the definite action nor it is the case of the petitioners that they had ever tried to ascertain as to what was the definite action that was directed to be taken by the concerned Minister. It was merely informed to the petitioners by the said letter that consequent to the directions for definite action, the hunger strike by petitioner should be withdrawn. Being so, the letter nowhere discloses any sort of assurance to the petitioners either on behalf of the State Government or any of its agencies. Being so, there is no question of issuing any writ of mandamus or any direction to the respondent nos.2 and 3 to abide by the alleged assurance under letter dated 20.3.1997.

6. It was also sought to be argued that apart from the said letter, there was also assurance given to the petitioners. Apparently prayer clause nowhere discloses any relief in that regard. But even otherwise not a single letter has been pointed out which could be said

to be disclosing any lawful assurance given to the petitioners by any authority on behalf of the State Government. Being so, question of giving any direction for compliance of the alleged assurance to the petitioners does not arise at all.

7. As regards the claim for compensation undoubtedly the learned Sessions Judge while acquitting the Petitioner No.1 had observed that he was acquitted on account of absence of evidence against him. At the same time the allegation of the Petitioner that there was a false charge-sheet filed against the petitioner no.1 was clearly rejected by the learned Sessions Judge and it was observed thus -

> "It is contended on behalf of the petitioner to specify the people’s agony P.S.I. Mr.Kangutkar (P.W.No.5) been presenting accused by false charge-sheet against accused nos.1 to 5. It is difficult to say that P.S.I. Kangutkar (P.w.No.5) had filed false charge-sheet but from the effort made by investigating officer it can be easily said that no knee and honest effort made in collecting evidence. Legal manners or

> method by collecting evidence had not been adopted. as such, I find accused nos.1 to 5 not guilty ....."

Obviously, while rejecting the contention regarding the false chargesheet, it was specifically observed by the learned Sessions Judge that investigating officer failed to collect the legal evidence in respect of the charges against the accused persons. That does not mean that the accused was totally innocent. It is on account of benefit of doubt arising out of failure on the part of the Investigating Officer to collect the sufficient evidence against the accused that the accused succeeded in getting acquittal in the matter. It does not amount to say that there was a false case instituted against the accused person. Being so, the contention regarding the case being false and that the same would entitle the petitioner to be paid with the compensation is devoid of substance.

8. As regards the contention that the petitioner no.1 was tortured while he was in custody, apart from mere allegation in that regard there is neither cogent material placed on record in support of the said

allegation nor there has been any finding arrived at by any adjudicating authority in relation to alleged torture of the petitioner No.1 while he was in custody. In the absence of even prima facie material in support of such allegations, question of entertaining the petition in that regard does not arise. Undisputedly the petitioner was arrested in the year 1992. The petition claiming compensation has been filed on 8.12.2004 without disclosing any justification for delay in approaching the court. Apart from the fact that there are disputed questions of fact in relation to the allegations regarding the torture, question of entertaining the petition at such belated stage without disclosing any justification does not arise at all.

9. The decisions sought to be relied upon on behalf of the petitioners are absolutely of no help to the petitioners. In the **D.K.Basu's case** attention was sought to be drawn to the definition of the torture which was referred by the Apex Court in para 10 of the decision, while contending that the ill-treatment to the petitioner no.1 while he was in custody would amount to torture justifying the claim for compensation. Undoubtedly if the torture is established certainly the

petitioners would be justified in pursuing their claim for compensation. However, there is no material even prima facie to arrive at the finding about the alleged torture by the police to the petitioner no.1 while he was in custody. The decision in **Saheli's case** is also of no help. Undoubtedly the State is liable for torturous acts committed by its agency. But as already observed above in the absence of any material regarding the torturous acts on the part of its agency, the decision is of no help to the petitioners.

10. For the reasons stated above therefore there is no case for entertaining the Petition, and hence the petition is rejected.

(R.M.S.Khandeparkar,J.)

(P.V.Kakade,J.)